

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Clinton D. Johnson, Jr., #HC12311948319)
a/k/a Clinton D. Johnson, Jr.,)
#SC007900097, a/k/a Clinton Douglas)
Johnson, Jr., a/k/a Kayzon Ru,)

Plaintiff-Appellant,)

vs.)

Officer B.R. Dancelon; Blake A. Norton;)
Shawn D. Chastin; Eli Elijah Hewell; Kim)
Rutz; Kim Dubose; Southern Healthcare)
Partners; Henry McMaster; Captain Jeremy)
Chapman; Brian Danielson; Mike)
Crenshaw; Wayne Owens; MPD Collins;)
Deputy Hailey; Bethany Blundy; David R)
Wagner; and Steven Gilliard,)

Defendants-Appellees.)

Civil Action Number 5:22-cv-01547-SAL

OPINION AND ORDER

This matter is before the court on the Fourth Circuit Court of Appeals Order, ECF No. 67, remanding the case for the limited purpose of allowing this court to rule on Johnson's motion to reopen the appeal period. For the following reasons, Petitioner's motion to reopen the appeal period, ECF No. 36, is GRANTED.

APPLICABLE LAW

Federal Rule of Appellate Procedure 4(a)(6) provides:

(6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.


DISCUSSION

This court issued its Order adopting the Report and Recommendation of United States Magistrate Judge Kaymani D. West and dismissing the case without prejudice on February 13, 2023. [ECF No. 52.] Copies of the Order and Judgement were mailed to Johnson that same day. [ECF No. 54.] Ten days later, Johnson filed a Notice of change of address. [ECF No. 56.] Two months passed and Johnson sent a letter to the clerk's office saying he had "received nothing nor was notified of any judgment, orders, or anything" in his case. [ECF No. 57.] The clerk's office promptly re-mailed copies of the Order and Judgment to Johnson at his new address. [ECF No. 58.] Johnson filed his Notice of appeal eighteen days later. [ECF No. 61.]

The court finds Johnson did not receive notice of the entry of the Order and Judgment he seeks to appeal within 21 days after entry. His motion was filed within 180 days of entry of Order and Judgment, and, because the case was dismissed without issuance and service of process, no party is prejudiced by re-opening the time to appeal. Johnson has satisfied the conditions of Fed. R. App. P. 4(a)(6)(A). Petitioner's Motion is **GRANTED**, and the period to file an appeal is re-opened for fourteen days from the entry of this Order.

IT IS SO ORDERED.

September 14, 2023
Columbia, South Carolina


Sherri A. Lydon
United States District Judge